TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. ~~125~~ 24

THE UNITED STATES, APPELLANT,

v.

THE SOUTHERN PACIFIC RAILROAD COMPANY (D. O. MILLS AND HOMER S. KING, TRUSTEES) AND THE CENTRAL TRUST COMPANY OF NEW YORK.

CROSS APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED JANUARY 15, 1900.

(17,000.)

(For record on main appeal see No. 123.)

SUPREME COURT OF THE UNITED STATES.

October Term, 1900.

No. 185.

THE UNITED STATES, APPELLANT,

v.

THE SOUTHERN PACIFIC RAILROAD COMPANY (D. O. MILLS AND HOMER S. KING, TRUSTEES) AND THE CENTRAL TRUST COMPANY OF NEW YORK.

CROSS APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

INDEX.

UNITED STATES OF AMERICA—ss.

Citation.

To The Southern Pacific Railroad Company, D. O. Mills and Homer S. King, Trustees, and the Central Trust Company of New York, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be held at the city of San Francisco, in the State of California on the twenty-eighth day of November, A. D. 1898, pursuant to an order allowing an appeal entered in the Clerk's office of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, from a final decree made and entered on the sixth day of June, 1898, in that certain cause, being in equity, No. 600, wherein the United States of America are complainants and appellants and you are defendants and appellees, to show cause, if any there be, why the said decree rendered against said appellants as in the said order allowing the appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this twenty-first day of November, A. D. 1898, and of the Independence of the United States, the one hundred and twenty-third.

ERSKINE M. ROSS,

United States Circuit Judge for the Ninth Circuit.

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, appellants, vs. The Southern Pacific Railroad Company et al., appellees. Citation.

Copy hereof received November 21, 1898, subject to all objections.

WILLIAM SINGER, Jr.,
Attorney for Defendants.

Filed Nov. 21, 1898. Wm. M. Van Dyke, Clerk.

In the United States Circuit Court, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA, Complainants, vs. SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, and HOMER S. KING, Trustees, and CENTRAL TRUST COMPANY OF NEW YORK, Defendants.	**No. 600.**

Petition for, and Order Allowing Appeal.

To the Judges of the United States Circuit Court, Ninth Circuit:

The United States of America, conceiving themselves aggrieved by the decree made and entered herein on the

sixth day of June, 1898, appeal from the said decree to the United States Circuit Court of Appeals for the Ninth Circuit, and file herewith their assignment of errors, asserted and intended to be urged upon appeal, and they pray that their appeal may be allowed; and further pray that upon this appeal being allowed, that all proceedings in this cause may be stayed, pending such appeal.

And your petitioners further pray that in pursuance of the provisions of section 1013, United States Revised Statutes, and of section 11, of the act of Congress of March 3, 1891, establishing the Circuit Courts of Appeal, that the transcript of the record filed in the said Circuit Court of Appeals, Ninth Circuit, by the defendants herein upon their appeal heretofore allowed, may be used by both parties, and that your petitioners may be heard thereon in the same manner as if records had been filed by the appellants in both cases.

Dated this thirty-first day of October, 1898.

JOSEPH H. CALL,

Special Assistant United States Attorney and of Counsel for United States.

Order Allowing Same.

The foregoing petition for appeal by the United States and prayer for supersedeas are allowed and granted.

And it is further ordered that the transcript of the record filed in the said Circuit Court of Appeals by the defendants herein, upon their appeal heretofore allowed, may be used by both parties, and that this appeal of the United States may be heard thereon in the same man-

ner as if records had been filed by the appellants in both cases, and to the end that a full and complete transcript of the record shall be made and transmitted to said Circuit Court of Appeals, the clerk of this Court shall make and transmit to the said Circuit Court of Appeals in addition to the record filed by the defendants on their appeal, a true copy of the petition of the United States for appeal, their assignment of errors, the order allowing appeal and all other proceedings in the case, not included in the transcript of the record filed by the defendants, as aforesaid.

Dated this thirty-first day of October, 1898.

ROSS,
Circuit Judge.

In the United States Circuit Court, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA, Complainants, vs. SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, and HOMER S. KING, Trustees, and CENTRAL TRUST COMPANY OF NEW YORK, Defendants.	No. 600.

Assignment of Errors.

The United States, in connection with their petition for appeal therein, present and file therewith their assign-

ment of errors, as to which matters and things they say that the decree entered herein on June 6, 1898, is erroneous, towit:

1. The Court erred in decreeing that the United States take nothing as to the lands, or any of them, adjudged by said decree to have been sold by the Southern Pacific Railroad Company to third persons in good faith and for value, being the lands described on pages No. 15 to No. 20, inclusive, of said decree, except the southeast one-quarter of section 25, township 9 north, range 15 west, San Bernardino meridian, it appearing that said lands had been contracted to be sold by said railroad company to third persons upon partial payments, and that only a part of the purchase price had been paid, and that no sale had been completed or deed to any of said lands executed, prior to the commencement of this suit.

2. The Court erred in refusing to adjudge the United States to be the owners and to quiet their title to the said lands or any of them.

3. The Court erred in refusing to adjudge that the defendants had no title or interest in said lands or any of them.

4. The Court erred in refusing to adjudge the United States to be the owner of the legal title to said lands and of all interest and estate claimed by the Southern Pacific Railroad Company therein, subject only to the equities in favor of said purchasers respectively to the equities in favor of said purchasers respectively to the amounts actually paid upon the purchase price.

5. The Court erred in adjudging that patents issued by the United States to defendant Southern Pacific Railroad

Company for said lands, pending this suit, granted to or conferred upon the defendants or any of them, any right, title or interest in said lands or any of them.

6. The Court erred in adjudging that said lands described aforesaid, or any of them, were sold by the Southern Pacific Railroad Company to third persons in good faith or for value.

7. The Court erred in adjudging that the terms of the contracts, under which said purchasers and each of them contracted to purchase said lands, did not carry notice to such purchasers, and each of them, of the right and title of the United States to said lands.

8. The Court erred in adjudging that its said decree shall not cancel or vacate any point issued by the United States to the Southern Pacific Railroad Company for lands sold by it to a bona fide purchaser.

9. The Court erred in refusing to adjudge what title and rights the defendants before the Court had in said lands.

10. The Court erred in refusing to give the United States a decree for those lands adjudged to have been sold by the Southern Pacific Railroad Company since November 22, 1889, the date of commencement of the suits in the cases reported in 146 U. S. 615-619.

11. The Court erred in refusing to adjudge that the Southern Pacific Railroad Company and those in privity with that company, who contracted to purchase lands while the former suits reported in 146 U. S. 615-619, were pending, were not bound by the adjudications in those cases.

12. TheCourt erred in adjudging that any executory contract for the sale of land made by the Southern Pacific

Railroad Company is valid as to any payment made thereon after notice to the purchaser of the rights of the United States.

Wherefore, the United States prays that said decree may be reversed in said particulars and that the United States be granted the relief therein set forth.

JOSEPH H. CALL,

Special asistant United States attorney and of counsel for the United States.

[Endorsed]: No. 600. In United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Co. *et al.* Petition for Appeal, etc.

Filed October 31, 1898. Wm. M. Van Dyke, Clerk. Joseph H. Call, special United States attorney.

In the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

THE UNITED STATES OF AMERICA, Complainants, vs. THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, Trustees, and the CENTRAL TRUST COMPANY of New York, Defendants.	No. 600.

Clerk's Certificate to Transcript.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, do hereby certify the foregoing six (6) typewritten pages, numbered from one to six inclusive, and comprised in one volume, to be a full, true and correct copy of the petition of the United States for appeal, their assignment of errors, and the order allowing the appeal, the same being all proceedings in the case not included in the transcript of the record filed in the United States Circuit Court of Appeals by the defendants herein, upon their appeal heretofore allowed, and that the same together constitute the transcript of the record on appeal to the United States Circuit Court of Appeals of the Ninth Circuit in said cause, in ac-

cordance with the order allowing and granting the petition for appeal by the United States, and prayer for *supersedeas.*

I do further certify that the cost of the foregoing record is $4.10, the amount whereof is to be paid me by the United States of America, the appellants in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, this twenty-fifth day of November, in the year of our Lord, one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-third.

WM. M. VAN DYKE,

Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

[Seal]

[Cancelled 10-ct. Internal Revenue Stamp.]

[Endorsed]: No. 495. In the United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, appellants, vs. The Southern Pacific Railroad Company, D. O. Mills and Homer S. King, Trustees, and the Central Trust Company of New York, appellees. Appeal from the Circuit Court of the United States for the Southern District of California. Transcript of Record.

Filed November 28, 1898.

F. D. MONCKTON,

Clerk.

10 At a stated term, to wit, the October term, A. D. 1898, of the United States circuit court of appeals for the ninth circuit, held at the court room in the city and county of San Francisco on Wednesday the third day of May, in the year of our Lord one thousand eight hundred and ninety-nine. Present: The Honorable William B. Gilbert, circuit judge; Honorable William W. Morrow, circuit judge; Honorable Thomas P. Hawley, district judge.

THE UNITED STATES OF AMERICA, APPELLANT,
v.
THE SOUTHERN PACIFIC RAILROAD COMPANY ET AL. } No. 495.

Ordered appeal argued by Joseph H. Call, esquire, special United States attorney, and William Singer, jr., esquire, counsel for appellees, and submitted to the court for consideration and decision.

11 United States circuit court of appeals for the ninth circuit, October term, 1899.

THE UNITED STATES OF AMERICA, APPELLANT,
v.
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills and Homer S. King, Trustees, and The Central Trust Company of New York, appellees. } No. 495.

Appeal from the circuit court of the United States for the southern district of California.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of California, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed.

(Endorsed:) Decree. Filed Oct. 9, 1899. F. D. Monckton, clerk.

12 In the United States circuit court of appeals, ninth circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and Homer S. King, Trustees, and Central Trust Company of New York. } No. 495.

Petition for and order allowing appeal.

To the judges of the United States circuit court of appeals, ninth circuit:

The United States of America, conceiving itself aggrieved by the decree made and entered herein on the day of October, 1899, appeals from the said decree to the United States Supreme Court, and files herewith its assignment of errors, asserted and intended to be urged upon appeal, and it prays that its appeal may be allowed; and further

prays that upon this appeal being allowed, that all proceedings in this cause may be stayed, pending such appeal.

And your petitioner further prays that the transcript of the record filed in the Supreme Court by the defendants herein upon their appeal heretofore allowed may be used by both parties, and that your petitioner may be heard thereon in the same manner as if records had been filed by the appellants in both cases.

Dated this 4th day of December, 1899.

JOSEPH H. CALL,
Special Assistant United States Attorney,
and of Counsel for United States.

13 *Order allowing same.*

The foregoing petition for appeal by the United States and prayer for supersedeas are allowed and granted.

And it is further ordered that the transcript of the record filed in the said Supreme Court by the defendants herein, upon their appeal heretofore allowed, may be used by both parties, and that this appeal of the United States may be heard thereon in the same manner as if records had been filed by the appellants in both cases; and to the end that a full and complete transcript of the record shall be made and transmitted to said Supreme Court, the clerk of this court shall make and transmit to the said Supreme Court, in addition to the record filed by the defendants on their appeal, a true copy of the petition of the United States for appeal, its assignment of errors, the order allowing appeal, and all other proceedings in the case not included in the transcript of the record filed by the defendants, as aforesaid.

Dated this day of December, 1899.

14 In the United States circuit court of appeals, ninth circuit.

UNITED STATES OF AMERICA, APPELLANT, *vs.* SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and Homer S. King, Trustees, and Central Trust Company of New York.	No. 495.

Assignment of errors.

The United States, in connection with its petition for appeal therein, presents and files therewith its assignment of errors, as to which matters and things it says that the decree entered herein on the day of October, 1899, is erroneous, to wit:

1. The court erred in decreeing that the United States take nothing as to the lands, or any of them, adjudged by said decree to have been sold by the Southern Pacific Railroad Company to third persons in good faith and for value, being the lands described on pages No. 15 and No. 20, inclusive, of said decree, except the southeast one quarter of section 25, township 9 north, range 15 west, San Bernardino meridian, it appearing that said lands had been contracted to be sold by said railroad company to third persons upon partial payments, and that only a part of

the purchase price had been paid, and that no sale had been completed or deed to any of said lands executed prior to the commencement of this suit.

15 2. The court erred in refusing to adjudge the United States to be the owner of and to quiet its title to the said lands, or any of them.

3. The court erred in refusing to adjudge that the defendants had no title or interest in said lands or any of them.

4. The court erred in refusing to adjudge the United States to be the owner of the legal title to said lands and of all interest and estate claimed by the Southern Pacific Railroad Company therein, subject only to the amounts favor of said purchasers respectively to the equities in actually paid upon the purchase price.

5. The court erred in adjudging that patents issued by the United States to defendant Southern Pacific Railroad Company for said lands, pending this suit, granted to or conferred upon the defendants, or any of them, any right, title, or interest in said lands or any of them.

6. The court erred in adjudging that said lands described aforesaid, or any of them, were sold by the Southern Pacific Railroad Company to third persons in good faith or for value.

7. The court erred in adjudging that the terms of the contracts, under which said purchasers and each of them contracted to purchase said lands, did not carry notice to such purchasers, and each of them, of the right and title of the United States to said lands.

8. The court erred in adjudging that its said decree shall not cancel or vacate any patent issued by the United States to the Southern Pacific Railroad Company for lands sold by it to a bona fide purchaser.

9. The court erred in refusing to adjudge what title and rights the defendants before the court had in said lands.

16 10. The court erred in refusing to give the United States a decree for those lands adjudged to have been sold by the Southern Pacific Railroad Company since November 22, 1889, the date of commencement of the suits in the cases reported in 146 U. S., 615-619.

11. The court erred in refusing to adjudge that the Southern Pacific Railroad Company and those in privity with that company, who contracted to purchase lands while the former suits reported in 146 U. S., 615-619, were pending, were not bound by the adjudications in those cases.

12. The court erred in adjudging that any executory contract for the sale of land made by the Southern Pacific Railroad Company is valid as to any payment made thereon after notice to the purchaser of the rights of the United States.

Wherefore, the United States prays that said decree may be reversed in said particulars and that the United States be granted the relief sought.

JOSEPH H. CALL,
Special Assistant United States Attorney
and of Counsel for the United States.

(Endorsed:) Petition for appeal of U. S., assignment of errors, &c. Filed December 4, 1899, F. D. Monckton, clerk, U. S. circuit court of appeals for the ninth circuit.

17 At a stated term, to wit, the October term, A. D. 1899, of the United States circuit court of appeals for the ninth circuit, held at the court room, in the city and county of San Francisco, on Monday the fourth day of December, in the year of our Lord one thousand eight hundred and ninety-nine. Present, the Honorable William W. Morrow, circuit judge; Honorable John J. De Haven, district judge.

THE UNITED STATES OF AMERICA, APPELLANT, *v.* THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills and Homer S. King, trustees, and the Central Trust Company of New York.	No. 495.

The petition for appeal by the United States and prayer for supersedeas are allowed and granted.

And it is further ordered that the transcript of the record filed in the Supreme Court by the defendants herein, upon their appeal heretofore allowed, may be used by both parties, and that this appeal of the United States may be heard thereon in the same manner as if records had been filed by the appellants in both cases; and to the end that a full and complete transcript of the record shall be made and transmitted to said Supreme Court the clerk of this court shall make and transmit to the said Supreme Court, in addition to the record filed by the defendants on their appeal, a true copy of the petition of the United States for appeal, its assignment of errors, the order allowing appeal, and all other proceedings in the case not included in the transcript of the record filed by the defendants as aforesaid.

18 United States circuit court of appeals for the ninth circuit.

THE UNITED STATES OF AMERICA, APPELLANT, *v.* THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills and Homer S. King, trustees, and the Central Trust Company of New York, appellees.	No. 495.

Certificate of clerk C. C. A. to transcript.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing seventeen (17) pages, numbered from one (1) to seventeen (17), inclusive, to be a full, true, and correct copy of the transcript of the record, the order of submission, the decree, the petition for an appeal to the Supreme Court of the United States, the assignment of errors filed therewith, and the order allowing the appeal to the Supreme Court of the United States in the above-entitled cause, as the originals thereof appear of record in my office, the same being all proceedings in the case not included in the transcript of the record filed in the Supreme Court of the United States by the appellees herein upon their appeal heretofore allowed, and that the same together constitute the transcript of the record on appeal to

the Supreme court of the United States in the above-entitled
19 cause in accordance with the order allowing the appeal of the United States and as requested and approved by the special United States attorney.

Attest my hand and the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 21st day of December, A. D. 1899.

[SEAL.] F. D. MONCKTON, *Clerk.*

20 UNITED STATES OF AMERICA, *ss.*

Citation.

To the Southern Pacific Railroad Company, D. O. Mills and Homer S. King, trustees, and the Central Trust Company of New York, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within sixty days from the date hereof, pursuant to an appeal allowed on behalf of the United States in open court on the fourth day of December, A. D. 1899, in the United States circuit court of appeals, ninth circuit, wherein the United States is plaintiff and appellant and you are defendants and appellees, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this fourth day of December, A. D. 1899.

WM. W. MARVIN,
United States Circuit Judge and Presiding Judge of the United States Circuit Court of Appeals, Ninth Circuit.

21 [Indorsed:] No. 495. In the Supreme Court of the United States. United States vs. S. P. R. R. Co. et al. Citation on appeal of the United States to Supreme Court U. S. Filed December 14, 1899. F. D. Monckton, clerk U. S. circuit court of appeals for the ninth circuit.

A copy of this citation was served on me on December 9th, 1899.

WM. SINGER, Jr.,
Atty. for the Defendants (Appellees).

(Indorsement on cover:) File No., 17609. U. S. C. C. of Appeals, 9th circuit. Term No., 185. The United States, appellant, vs. The Southern Pacific Railroad Company, D. O. Mills et al. Filed January 15, 1900. Cross-appeal. (See Term No., 152, A. D. 1900. File No., 17556 for record on main appeal).

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